

ORIGINAL
MOHAVE COUNTY ATTORNEY



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County Attorney

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Chief Deputy

Sarah's House Victim Center
P. O. Box 7000
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(928) 718-5522



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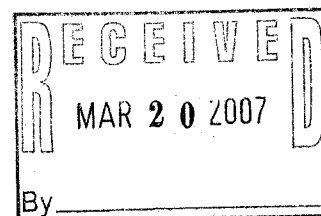
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Bullhead City - (928) 758-0727
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✓ **Civil Division:**

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William J. Ekstrom, Jr.: (928) 753-0770, x-4277
Email: Bill.Ekstrom@co.mohave.az.us



March 12, 2007

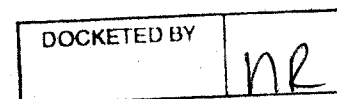
Mr. William A. Mundell, Commissioner
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007-2927

VIA FIRST CLASS MAIL

Arizona Corporation Commission
DOCKETED

MAR 21 2007

Re: Public Records Request
Perkins Mountain Water Company, Docket No. W-20380A-05-0490;
Perkins Mountain Utility Company, Docket No. SW-20379A-05-0489



Dear Mr. Mundell:

Please find enclosed the information which you had requested on February 20, 2007 pursuant to A.R.S. § 39-121.01.

I have discussed this matter with Chris Kempley and members of your staff in an attempt to clarify which records would be germane to your inquiry and have focused on e-mails and written correspondence. We, of course, have boxes of materials which involve area plans and zoning which we will make available for inspection and review.

As a courtesy to yourself and the Commission, we are waiving your cost for copies.

If you require further information or wish to discuss these items, please let me know.

Sincerely,

William J. Ekstrom, Jr.
Special Deputy County Attorney

AZ CORP COMMISSION
DOCUMENT CONTROL

2007 MAR 21 P 3:25

RECEIVED

From: "Buster Johnson" <buster.johnson@co.mohave.az.us>
To: "Barbara Bracken" <Barbara.Bracken@co.mohave.az.us>
Date: 03/08/2007 8:06:52 AM
Subject: RE:ACC Public Record Request

Nothing for me

[Message delivered by NotifyLink]

-----Original Message-----

From: "Barbara Bracken" <Barbara.Bracken@co.mohave.az.us>
Sent: Wed, March 07, 2007 3:32 PM
To: "Pete Byers" <Pete.Byers@co.mohave.az.us>, "Carol Decker-Noli" <Carol.Decker-Noli@co.mohave.az.us>, "Susan Donahue" <Susan.Donahue@co.mohave.az.us>, "Buster Johnson" <Buster.Johnson@co.mohave.az.us>, "Cindy Levesque" <Cindy.Levesque@co.mohave.az.us>, "Bonnie Nickles" <Bonnie.Nickles@co.mohave.az.us>, "Tom Sockwell" <Tom.Sockwell@co.mohave.az.us>
Cc: "Linda Kelly" <Linda.Kelly@co.mohave.az.us>, "Yvonne Orr" <Yvonne.Orr@co.mohave.az.us>, "Ron Walker" <Ron.Walker@co.mohave.az.us>
Subject: ACC Public Record Request

Dear Board Members:

Attached is correspondence from Attorney Ekstrom and Commissioner Mundell, ACC, regarding a public record request. Please provide me with any written communication between you and Rhodes Homes or any of its affiliates or personnel. I will in turn forward the information to Bill. If you do not have any written communications, let me know; we are on a short timeline. If you have any questions regarding the request, please contact Bill. Thanks.

Barbara

Snell & Wilmer
L.L.P.
LAW OFFICES

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602.382.6070 F
swlaw.com

Robert J. Metli
602.382.6568
rmetli@swlaw.com

January 17, 2006

*Barbara
Varnou
Correspondence*

Ms. Barbara Bracken
Clerk of the Board
Mohave County Board of Supervisors
PO Box 7000
Kingman AZ 86402-7000

Re: Franchise Agreement and Franchise for Public Service Corporations for
Perkins Mountain Utility Company and Perkins Mountain Water Company

Dear Ms. Bracken:

Enclosed please find the originally executed Franchise Agreement and Franchise for Public Service Corporations for Perkins Mountain Utility Company and Perkins Mountain Water Company, respectively. Also enclosed is a check in the amount of \$1,000, which constitutes the application fees for both Perkins Mountain Utility Company and Perkins Mountain Water Company.

The Franchise Agreements have been slightly modified to accurately reflect the utility's financial condition as well as the status of construction of the underlying facilities. Pursuant to Section 4, Terms and Conditions, Subparagraph J, the Franchisee shall submit a **projected financial statement** initially, and then annually thereafter, a complete financial statement to the Board which would reflect the current financial status of the Franchisee. As the utilities have not yet conducted business, there is no hard financial data to support a financial statement at this time.

In Section 14, Liability Insurance Required, Franchisee shall provide **prior to commencing construction**, and at all times thereafter, proof of a minimum of one million dollars in excess liability.

MOHAVE COUNTY BOARD of SUPERVISORS

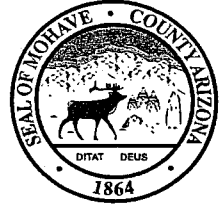
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700 West Beale Street

Kingman, Arizona 86402-7000

Website - www.co.mohave.az.us

TDD - (928) 753-0726



District 1
Pete Byers
(928) 753-0722

District 2
Tom Sockwell
(928) 758-0713

District 3
Buster D. Johnson
(928) 453-0724

County Manager
Ron E. Walker
(928) 753-0729
FAX (928) 718-4957

Clerk of the Board
Barbara Bracken
(928) 753-0731
FAX (928) 753-0732

February 23, 2006

Robert J. Metli
Snell & Wilmer
One Arizona Center
Phoenix, AZ 85004-2202

Dear Mr. Metli:

Please be advised at the Mohave County Board of Supervisors Meeting held February 6, 2006, the Board acknowledged receipt of the water system franchise request for Perkins Mountain Water Company and the wastewater system franchise request for Perkins Mountain Utility Company

The date set for the Public Hearings on the franchise requests will be March 6, 2006, at the Board of Supervisors Auditorium, 700 W. Beale Street, Kingman, Arizona. The Board Meeting will begin at 9:30 A.M.

If you have any questions, please do not hesitate to contact this office.

Sincerely,

FOR THE BOARD OF SUPERVISORS

Barbara Bracken, Clerk of the Board

Snell & Wilmer
L.L.P.
LAW OFFICES

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Robert J. Metli
602.382.6568
rmetli@swlaw.com

XC: BOS
Manager
P+Z
Epstein

DENVER
LAS VEGAS
ORANGE COUNTY
PHOENIX
SALT LAKE CITY
TUCSON

March 6, 2006

RECEIVED

MAR 08 2006

CLERK OF THE BOARD

Mr. Herbert R. Guenther
Arizona Department of Water Resources
3550 North Central Avenue
Phoenix, AZ 85012

Re: The Villages of White Hills
Analysis of Adequate Water Supply (ADWR #23-401674)

Dear Mr. Guenther:

We have been retained by Rhodes Homes – Arizona LLC and American Land Management, LLC (“ALM”) (collectively the “Companies”) to protect their vested interest in the priority date established by law for the above referenced Application for an Analysis of Adequate Water Supply (“Application”). This letter is in response to the February 17, 2006, letter you sent to ALM claiming that no priority date has been assigned. This statement is contrary to prior correspondence from the Department and is not supported by the facts. ALM’s hydrogeologist, Errol L. Montgomery & Associates, Inc. (“Montgomery & Associates”) has been working in close cooperation with ADWR to investigate and resolve the hydrology issues related to the Company’s land in Mohave County. This is an ongoing process that is complex and time consuming. ALM has invested a significant amount of time and money toward demonstrating the physical availability of adequate groundwater in the aquifer system in the vicinity of its land.

Montgomery & Associates prepared the Application, along with the accompanying hydrology studies, and submitted it to the Arizona Department of Water Resources (“ADWR” or “the Department”) on March 18, 2005. Additional hydrology test results were filed on May 10, 2005. The Department acknowledged by letter dated August 9, 2005, that it had completed its administrative review of the Application and determined it to be complete pursuant to statute.

The Department then requested information on technical issues pertaining to the hydrology information that was provided as part of the Application. These are substantive issues. The hydrological information provided did not meet the substantive requirements and the Department was requesting supplemental information.

Mr. Herbert R. Guenther
Arizona Department of Water Resources
March 6, 2006
Page 3

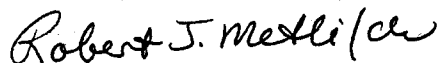
complete by operation of law. Pursuant to state statute, if an agency does not issue a written notice of administrative completeness or deficiencies within the administrative completeness review timeframe as set forth by the Department, the application is deemed administratively complete.¹ The completeness review timeframe for an analysis of water adequacy is 60 days.² As noted above, the Application was filed on March 18, 2005. There was no written response from the Department before August 9, 2005, 144 days after the Application was submitted. Even if the supplemental hydrology information submitted on May 10, 2005, were to be considered the Application date, no written response was received from ADWR until 91 days later.

Administrative completeness is defined as an application that contains all components required by statute or rule³. The Company provided all the information that is required for a complete application pursuant to ADWR rules⁴. The additional work that ADWR and the Company have agreed to goes far beyond completion of an application. The Company has been working diligently to provide ADWR the supplemental information the Department needs to complete its substantive review. Additional wells are being drilled. Data collecting and testing are ongoing. A supplemental report will be submitted to ADWR with all the information described in the Proposal. ALM has invested and continues to invest a significant amount of time and money into additional studies, wells and testing.

Be advised that we will take whatever steps are necessary to preserve our client's rights. If need be, the Company will request an administrative hearing to address the apparent attempt in your letter to rescind the Company's priority status. ALM is working, however, toward resolving the hydrology issues with ADWR and will continue to work cooperatively with the Department in its goal of assessing the hydrology in that area.

Very truly yours,

Snell & Wilmer



Robert J. Metli

cc: Mr. Carlos Ronstadt, Snell & Wilmer L.L.P.
Mr. Jim Rhodes, Rhodes Homes
Mohave County Board of Supervisors

¹ A.R.S. §41-1074(C).

² A.A.C. R12-15-401.

³ A.R.S. §41-1072(1).

⁴ A.A.C. R12-15-716.

Kristin K. Mayes, Commissioner

July 10, 2006

Page 2

Homes is not a public service corporation by virtue of its affiliation. Rhodes Homes provides water solely to its own private property from its own private wells. It has no intention of providing water service to any customers. It is in the business of building master planned communities.

It is common practice in this state for developers of master planned communities to build the utility infrastructure and then transfer the assets to an approved public service corporation at a later date, subject to refunds, or in some cases contributed outright. Upon receipt of the assets, the water or wastewater company accounts for such assets as advances or contributions in aid of construction, as is sanctioned by the Commission's regulations. The Del Webb properties in Anthem are but one example of a master planned community that built the infrastructure and then conveyed the assets to the water company. Another example of a developer building infrastructure is the Arizona Gateway Development in the vicinity of Lake Havasu City in Mohave County. The developer constructed all of the water and sewer facilities and then conveyed the assets to the utility. The utility company recorded this plant as a refundable advance pursuant to a Line Extension Agreement.

At the present time, Perkins has not entered into any agreements with Rhodes Homes or any other entity to build or convey assets. If Perkins receives its CC&N, it too will be able to enter into a Line Extension Agreement with Rhodes Homes, subject to Commission approval.

Because developers have several alternatives to a regulated public service corporation for providing water service to a development, often times the water provider is decided as the community is being developed. Depending on the size of the development, these options include a community facilities district, domestic water improvement district, homeowners association or entering into an agreement with a local municipality. The type of entity a developer chooses is a business decision and a multitude of factors are taken into account in making that decision. It is not uncommon for a developer to begin installation of utility infrastructure concurrent with the construction of the initial phases of the development while still determining what entity will provide utility service.

Master planned communities require significant investment, planning and coordination. In many instances, it may be years before the first house is occupied. During those intervening years, developers are within their rights to continue building infrastructure. This is done to ensure that the necessary infrastructure is in place to provide utility services by the time that the first house is occupied, regardless of the ultimate service provider.

Furthermore, the Arizona Department of Environmental Quality's ("ADEQ") own rules state that an approval to construct becomes void if construction does not begin within one year of issuance

or intending to monopolize the territory with a public service commodity. 6) Acceptance of substantially all requests for service. 7) Service under contracts and reserving the right to discriminate is not always controlling and 8) Actual or potential competition with other corporations whose business is clothed with public interest. In applying these factors, the court upheld the Arizona Corporation Commission's decision not to regulate El Paso as a public service corporation, despite the fact that El Paso dealt in a commodity which the public generally holds an interest. The court found that El Paso was not monopolizing, had no future plans to monopolize, did not accept "substantially all requests for customers" and did not intend to add any new direct sale customers. *Southwest Gas* at 287.

ARIZONA DEPARTMENT OF WATER RESOURCES

Legal Division

3550 North Central Avenue, Phoenix, Arizona 85012

Telephone 602 771-8472

Fax 602 771-8683



April 5, 2006

Janet Napolitano
Governor

Herbert R. Guenther
Director

RECEIVED

APR 10 2006

SUPERVISOR, DIST. 1

RECEIVED

APR 07 2006

CLERK OF THE BOARD

Robert J. Metli
Carlos D. Ronstadt
Snell & Wilmer L.L.P.
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-0001

**RE: The Villages of White Hills
Analysis of Adequate Water Supply Application No. 23-401674**

Dear Mr. Metli and Mr. Ronstadt:

I am responding to your respective letters to Herb Guenther, Director, dated March 6, 2006 and March 17, 2006, regarding the application referenced above. Since the two letters address virtually the same subject matter, I will respond to both letters at this time.

You have asserted that because the application is administratively complete, the application therefore has a priority date for purposes of the Assured and Adequate Water Supply rules. A.A.C. R12-15-701 *et seq.* Although the application in question was deemed administratively complete under A.R.S. § 41-1074(C), the application is *not substantively correct* and, therefore, no priority date has yet been assigned to the application.

According to A.A.C. R12-15-716(D), "the priority date of an application for a water report, designation of adequate water supply, or analysis of adequate water supply shall be the date that a complete *and correct* application is filed with the Director." (Emphasis added.) Pursuant to A.R.S. § 41-1074(C), the application was deemed "administratively complete" on August 9, 2005. The application is not, however, correct.¹ The application is complete *and correct* when the applicant has submitted all the information required to make a determination on the application and the information is verified as acceptable.²

Although the application was deemed administratively complete because the Department of Water Resources (Department) did not issue a written notice of administrative completeness or deficiencies within the administrative review time frame, the application did not contain all of

the information requested in the application. In the August 9 letter, the Department requested the additional information needed to review the application and make a determination on the physical availability of groundwater. Until the Department receives that information and verifies it as acceptable,

¹ An application may be complete but incorrect, as in this case. See A.R.S. § 45-578(A) ("The first publication [of notice of an application for a certificate of assured water supply] shall occur within fifteen days after the application is determined *complete and correct* or at any earlier time as the applicant may request after the application is determined *complete*." (Emphasis added)).

² See Notice of Proposed Rulemaking, 12 A.A.R. 383, 391, 441, Feb. 10, 2006 (explaining that the proposed rules clarify the procedure for determining the priority date of an application by setting forth the meaning of "complete and correct"). Although the proposed rules are not expressly applicable to the application in question, the change to the rules is not a substantive change, but a clarifying change to explain the Department's current practice.

Snell & Wilmer
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swlaw.com

Robert J. Metli
602.382.6568
rmetli@swlaw.com

March 6, 2006

Mr. Herbert R. Guenther
Arizona Department of Water Resources
3550 North Central Avenue
Phoenix, AZ 85012

Re: The Villages of White Hills
Analysis of Adequate Water Supply (ADWR #23-401674)

Dear Mr. Guenther:

We have been retained by ~~Rhodes~~ Homes – Arizona LLC and American Land Management, LLC (“ALM”) (collectively the “Companies”) to protect their vested interest in the priority date established by law for the above referenced Application for an Analysis of Adequate Water Supply (“Application”). This letter is in response to the February 17, 2006, letter you sent to ALM claiming that no priority date has been assigned. This statement is contrary to prior correspondence from the Department and is not supported by the facts. ALM’s hydrogeologist, Errol L. Montgomery & Associates, Inc. (“Montgomery & Associates”) has been working in close cooperation with ADWR to investigate and resolve the hydrology issues related to the Company’s land in Mohave County. This is an ongoing process that is complex and time consuming. ALM has invested a significant amount of time and money toward demonstrating the physical availability of adequate groundwater in the aquifer system in the vicinity of its land.

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XC: BDS
Manager
P+Z
Epstrom

DENVER
LAS VEGAS
ORANGE COUNTY
PHOENIX
SALT LAKE CITY
TUCSON

RECEIVED

MAR 08 2006

CLERK OF THE BOARD

Mr. Herbert R. Guenther
Arizona Department of Water Resources
March 6, 2006
Page 3

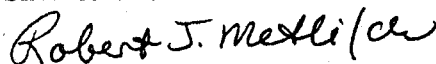
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Be advised that we will take whatever steps are necessary to preserve our client's rights. If need be, the Company will request an administrative hearing to address the apparent attempt in your letter to rescind the Company's priority status. ALM is working, however, toward resolving the hydrology issues with ADWR and will continue to work cooperatively with the Department in its goal of assessing the hydrology in that area.

Very truly yours,

Snell & Wilmer



Robert J. Metli

cc: Mr. Carlos Ronstadt, Snell & Wilmer L.L.P.
Mr. Jim Rhodes, Rhodes Homes
Mohave County Board of Supervisors

¹ A.R.S. §41-1074(C).

² A.A.C. R12-15-401.

³ A.R.S. §41-1072(1).

⁴ A.A.C. R12-15-716.


encouraging growth patterns that reduce infrastructure costs and utilize existing public facilities, for consideration of the community or neighborhoods surrounding the proposal site for compatibility with adjacent land uses, and to promote growth in or adjacent to existing urban and suburban areas where adequate. All of these elements are compromised with the approval of this amendment.

The National Park Service initiated acquisition of these lands in partnership with the Trust for Public Lands in 2002. Mr. Rhodes acquired these lands with full knowledge of the existing zoning and Mohave Counties General Plan. We respect Mr. Rhodes' right to pursue development, consistent with existing zoning, although we are opposed to it. We have met with Mr. Rhodes and have jointly agreed to pursue a land exchange for other federal lands within Mohave County in an attempt to protect these lands consistent with Lake Mead NRA purposes. We have tentatively agreed on lands that could be considered in such an exchange. A meeting is set for December 13, 2005 in the Bureau of Land Management State Office to pursue a land exchange. A rezoning of these lands at this time could jeopardize these discussions.

The Mohave County Planning and Zoning staff recommendation was for the denial of this proposed amendment. Their rationale included the sites do not have legal access, residential development conflicts with the Growing Smart Legislation and the National Park Service General Management Plan, and the proposal is in conflict with several policy statements of the Mohave County General Plan.

With this letter the National Park Service extends its opposition to the proposed amendment to the Mohave County General Plan.

Sincerely,


William K. Dickinson
Superintendent

In light of this very recent development, we kindly request that you take another ponder over the situation involving Temple Bar. This land is actually the closest of our holdings to the largest metropolitan area adjoining Mohave County, the Las Vegas/Henderson metropolitan area. The demands for housing and new centers of development around this area are currently strong and are projected to remain that way in the near future. Rhodes Homes purchased this area of private property with the intent to bring quality sustainable development centers to this area. Wall Street has recently analyzed our company's position and has committed hundreds of millions of dollars to the company in anticipation of rapid growth in new development centers in the Southwest. We strongly believe the Temple Bar area and the County will benefit in the near future from such an intensive economic investment. Please remember that the request before for the Temple Bar land on December 29th is only a request to modify the general plan and area plans for this area – an approval action only modifies the County's General Plan and does not authorize development activity. The Temple Bar property will still have to be subject to normal County processes including zoning and subdivision review and approvals and review and approval of development agreements to help guide the development's provision of necessary public infrastructure as it moves forward.

Finally, I would like to bring to your attention some important facts regarding the constraints to a private property owners ability to develop in Mohave County. First, the percentage of private property holdings in the County as a percentage of its total land area is minuscule. The majority of land in the County is controlled by Federal, State and Tribal governments and their agencies. Rhodes Homes has accepted this challenge of aggregation and still has invested millions of dollars in the County and dedicated itself to working through the time consuming problems associated with the patterns of land ownership in the County. Second, quality public infrastructure system creation is very expensive and occurs to a great extent at the beginning of the development cycle. Roads and utility systems must be oversized and built in anticipation of future development, significant areas of land must be dedicated for the provision of public services and financing mechanisms must be established so that new growth pays for new growth. All these requirements require the experience and financial backing of major development interests. Rhodes Homes has committed to working with the County to make quality development occur in Mohave County.

Finally, in the remainder of this letter, I would like to point out some of the benefits of the County attracting quality master planned community developments. We would hope that the new information that has come forth affecting this project would help the Board to accept the twice given Planning Commission's recommendation of passage for this property. We look forward to working with the County for many years to come in providing a new standard of development of the County's new activity centers.

Summary of the Benefits of Master Planned Community Development:

Balanced Mix of Uses. The hallmark of any quality plan is to provide opportunities for the residents to live, work, shop and play within the project. This thoughtful approach is not only convenient for the residents; it will also build town pride and loyalty. A

strategically advantageous position to compete against other areas for large-scale and other sized projects staying in or locating in the County. It is an undeniable industry truth that retail and employment follows rooftops. Through advanced planning, first-class infrastructure and coordinated transportation planning, this project will be well situated to eventually capture and stimulate for the County some new high-revenue generating commercial and employment activity.

I am available to answer any questions you all might have regarding the Temple Bar project this holiday week at the following number: 602-481-9536. Best wishes for a happy and healthy New Year.

Very truly yours,

GALLAGHER & KENNEDY, P.A.

By:

John D. DiTullio

John D. DiTullio /ama

JDD:ama

cc: Jim Rhodes, President Rhodes Homes

FAX

TO: Honorable Pete Byers, County Supervisor, District 1
PHONE: (928) 753-0722
FAX: (928) 753-1679
FROM: Lucy Stewart, LAS Consulting, Inc.
PHONE: (702) 499-6469
FAX: (702) 341-8489
DATE: October 4, 2005
SUBJECT: Rhodes Homes Retreat at Temple Bar Area Plan
PAGES: 3

Next week the Planning & Zoning Commission will hear the 5th Rhodes' Area Plan amendment, called The Retreat at Temple Bar. The property is really located near Gregg's Hideout. I wanted to explain the situation surrounding this application so you could have a better understanding of the issues. Below are the facts regarding the property:

- 1) The area plan is a request for a master planned community consisting of 3040 privately owned acres.
- 2) The property is located within the boundary of Lake Mead National Park.
- 3) The National Parks Service staff has indicated they would like to acquire this property.
- 4) Jim Rhodes and/or his consultants have met with the National Parks Service staff. Jim Rhodes and/or his consultants agreed to work with the National Parks Service towards acquisition of his property.

I know this is a confusing situation so I wanted to try and give you a factual account of what has occurred to date. Please let me know if you have any questions regarding this matter. Lucy Stewart

Cc:

Honorable Tom Sockwell, Chair, District 2

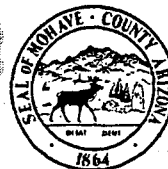
Honorable Buster Johnson, County Supervisor District 3

Mohave County Information Technology Department

Mike Matthews
Director

700 W. Beale Street
P.O. Box 7000
Kingman, AZ 86402-7000

Phone: (928) 753-0740
Fax: (928) 753-0778



Memorandum

To: Bill Ekstrom, Special Deputy County Attorney
From: Mike Matthews, Information Technology Director
Date: 03/08/2007
Re: Public records request

Per your public records request I have searched all emails from or to the County Manager and the individual Board of Supervisor members for any email containing the words Rhodes, Perkins Mountain or Snell and am forwarding you the results.

Adm,

There were no "e-mails" between Board members or the manager and individuals affiliated with Rhodes Homes or Perkins Mountain. I have several between myself and Cris Stevens + Jan DiTella which I will provide if you want them. Also I'm certain P&E staff has some. *WJ*